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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF VIRGINIA

3 Norfolk Division

4 -----x

5 ePLUS INC.,)

6 Plaintiff,) Civil Action No.

7 v.) 3:09-CV-620 (REP)

8 LAWSON SOFTWARE, INC.,)

9 Defendant.)

10 -----x

11

12 CONFIDENTIAL - SOURCE CODE

13

14 Videotaped Deposition of BENJAMIN F. GOLDBERG, Ph.D.

15 Washington, DC

16 Thursday, February 2, 2012

17 9:01 a.m.

18

19

20 Job No.: 17583

21 Pages: 1 - 214

22 Reported by: Lee Bursten, RPR, CRR

EXHIBIT

tobies'

12

CONFIDENTIAL VIDEOTAPED DEPOSITION OF BENJAMIN F. GOLDBERG, PH.D.
CONDUCTED ON THURSDAY, FEBRUARY 2, 2012

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1 Q Are you aware of any bases for your 10:40:11
2 opinions as to colorable differences that are not 10:40:14
3 found within interrogatory -- Lawson's answer to 10:40:19
4 interrogatory number 5? 10:40:24
5 MR. LO: Objection, vague. 10:40:25
6 A Without going through paragraph by 10:40:29
7 paragraph of the rog response and of my report and 10:40:34
8 comparing them, I couldn't give you an answer. 10:40:42
9 BY MS. ALBERT: 10:40:49
10 Q Are you aware of any additional opinions as 10:40:50
11 to noninfringement that you rendered that are not 10:40:53
12 found within the scope of Lawson's supplemental 10:40:58
13 answer to interrogatory number 5? 10:41:03
14 A Again, without going through line by line, 10:41:06
15 sitting here, I don't know the answer to that. 10:41:09
16 Q Did you understand that the Court ordered 10:41:14
17 that your opinions were to be confined to the factual 10:41:17
18 bases and contentions set forth in that interrogatory 10:41:19
19 answer? 10:41:23
20 MR. LO: Objection. Lacks foundation. 10:41:28
21 Vague. 10:41:30
22 A What I understood was that Lawson 10:41:33

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1 identified three major changes that it made in its 10:41:38
2 interrog response. And those were the changes that I was 10:41:43
3 supposed to consider. And that's what I did. 10:41:49
4 BY MS. ALBERT: 10:41:53
5 Q So you did not attempt to confine yourself 10:41:53
6 to the factual bases and contentions that were set 10:41:57
7 forth in Lawson's supplemental answer to ePlus's 10:42:00
8 interrogatory number 5? 10:42:04
9 MR. LO: Objection, asked and answered. 10:42:05
10 Also misstates the testimony. 10:42:07
11 A Well, the factual basis was the changes 10:42:08
12 made to the Lawson system. And those are the changes 10:42:14
13 that I considered. I did not consider as part of my 10:42:21
14 analysis other changes that were made, but were not 10:42:27
15 the subject of the discussion in the interrogatory 10:42:34
16 response. 10:42:37
17 BY MS. ALBERT: 10:42:41
18 Q So I don't know that that answered my 10:42:41
19 question of whether you attempted to confine yourself 10:42:44
20 in your opinions to the factual bases and contentions 10:42:50
21 that were set forth in Lawson's supplemental answer 10:42:53
22 to ePlus's interrogatory number 5. 10:42:57

**CONFIDENTIAL VIDEOTAPED DEPOSITION OF BENJAMIN F. GOLDBERG, PH.D.
CONDUCTED ON THURSDAY, FEBRUARY 2, 2012**

	the class level of the UNSPSC code does not enable a	11:54:15
1	user to find substitutable goods because the user	11:54:19
2	must manually review the search results and determine	11:54:23
3	for himself which of the search results satisfies his	11:54:26
4	needs?	11:54:28
5	MR. LO: Objection, vague. Misstates.	11:54:31
6	A Can you read it back, please.	11:54:39
7	(Requested portion of record read.)	11:54:44
8	A So my opinion is that since the RQC	11:55:14
9	interface will display all the items of a class which	11:55:25
10	may be substantially different from each other and	11:55:34
11	requires the user to try to figure out without the	11:55:37
12	benefit of the UNSPSC commodity code which of those	11:55:41
13	items may or may not be substitutable, I don't	11:55:47
14	believe that that satisfies the converting element of	11:55:56
15	the claims.	11:56:03
16	BY MS. ALBERT:	11:56:04
17	Q Where in the Court's construction of the	11:56:05
18	converting data elements did the Court indicate that	11:56:09
19	the system had to perform the converting data	11:56:14
20	function without any user intervention?	11:56:17
21	A Oh, I certainly did not say that. I	11:56:23
22		

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1 believe Mr. Weaver misunderstood what I said in my 11:56:28
2 report. I think maybe you share the misconception. 11:56:32
3 It is clear that based on what occurred at trial, 11:56:39
4 that the converting means may include the user 11:56:48
5 selecting an item, putting the item -- well, in the 11:57:02
6 RSS case, into the Shopping Cart, then choosing an 11:57:08
7 equivalent item with the same commodity code, putting 11:57:14
8 that item into the Shopping Cart of RSS, and removing 11:57:17
9 the first one; since the jury found a system of that 11:57:22
10 capability to infringe, I'm certainly not saying that 11:57:31
11 no user intervention is required. 11:57:33

12 So that's just a misstatement of my 11:57:39
13 opinion. 11:57:42

14 Q Well, do you understand that Lawson's 11:57:42
15 expert at trial also rendered an opinion that the RSS 11:57:44
16 system couldn't perform converting data functionality 11:57:52
17 without the user being required to sift through the 11:57:59
18 search results to determine whether the items were 11:58:03
19 substitutable? 11:58:06

20 MR. LO: Objection, lacks foundation. 11:58:07

21 A As you know, I was asked to assume that the 11:58:12
22 jury's verdict was correct, and therefore, since 11:58:17

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1 A No. Meaning that the system -- well, going 13:46:51
2 back to the claims now, a system that -- a system 13:47:01
3 could not get out of infringement by simply allowing 13:47:10
4 the user to select and search one catalog. 13:47:13

5 Q Well -- 13:47:20

6 A However -- 13:47:20

7 Q Okay. Excuse me. 13:47:22

8 A However, the system of the claimed 13:47:24
9 invention must allow a user, if he so chooses, to be 13:47:30
10 able to search among multiple catalogs and -- well, 13:47:38
11 select among multiple catalogs, and if the user so 13:47:45
12 chooses, to select and search among multiple 13:47:50
13 catalogs, put those items into a single requisition. 13:47:54

14 Q If the '683 patent claims do not require 13:48:04
15 that the system allow the user to search, to select 13:48:11
16 among multiple product catalogs and then search among 13:48:17
17 the multiple product catalogs, then you would have no 13:48:22
18 noninfringement opinion, correct? 13:48:27

19 13:48:29
20 A MR. LO: Objection, misstates. Also vague. 13:48:29
21 13:48:35
22 A If the user can never select more than one 13:48:44
 catalog to search, such that the items that the user 13:48:55
 chooses goes onto a single requisition, then I don't

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1 15:43.

2 (Recess.)

3 THE VIDEOGRAPHER: We are back on the

4 record at 15:47.

5 MR. LO: So we have no questions on behalf

6 of Lawson. So subject to our request that the depo

7 be marked as confidential source code, we have

8 nothing further.

9 MS. ALBERT: Thank you for your time,

10 Dr. Goldberg.

11 THE VIDEOGRAPHER: This ends the deposition

12 of Benjamin F. Goldberg, Ph.D. We are off the record

13 at 15:47.

14 (Signature having not been waived, the

15 videotaped deposition of BENJAMIN F. GOLDBERG, Ph.D.

16 was concluded at 3:47 p.m.)

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CONFIDENTIAL VIDEOTAPED DEPOSITION OF BENJAMIN F. GOLDBERG, PH.D.
CONDUCTED ON THURSDAY, FEBRUARY 2, 2012

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1 ACKNOWLEDGMENT OF DEPONENT

2 I, BENJAMIN F. GOLDBERG, Ph.D., do hereby
3 acknowledge that I have read and examined the
4 foregoing testimony, and the same is a true, correct
5 and complete transcription of the testimony given by
6 me and any corrections appear on the attached Errata
7 sheet signed by me.

8

9

10

11 _____
(DATE)

12 _____
(SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Lee Bursten, the officer before whom the
3 foregoing deposition was taken, do hereby certify
4 that the foregoing transcript is a true and correct
5 record of the testimony given; that said testimony
6 was taken by me stenographically and thereafter
7 reduced to typewriting under my direction; and that I
8 am neither counsel for, related to, nor employed by
9 any of the parties to this case and have no interest,
10 financial or otherwise, in its outcome.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand and affixed my notarial seal this 3rd day of
13 February, 2012.

14
15 My commission expires June 30, 2014.

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NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ePLUS INC.,)
)
Plaintiff,)
)
v.) Case No. 3:09CV620 (REP)
)
LAWSON SOFTWARE, INC.,)
)
)
Defendant.)

**DECLARATION OF JASON C. LO IN SUPPORT OF
DEFENDANT LAWSON SOFTWARE, INC.'S MEMORANDUM IN OPPOSITION TO
EPLUS'S MOTION TO EXCLUDE PORTIONS OF LAWSON'S EXPERT TESTIMONY**

I, Jason C. Lo, declare as follows:

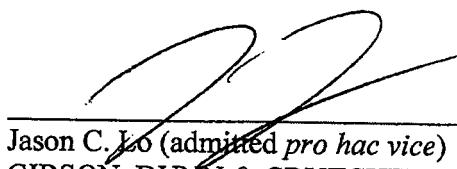
1. I am a member of the bar of the State of California and a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel to Lawson Software, Inc. ("Defendant" or "Lawson") in the above-captioned action. I submit this declaration in support of Defendant's Memorandum in Opposition to ePlus's Motion to Exclude Portions of Lawson's Expert Testimony.
2. Attached at Exhibit 1 is a true and correct copy of Defendant Lawson Software, Inc.'s Responsive Claim Construction Brief.
3. Attached at Exhibit 9 is a true and correct copy of a letter sent from Daniel McDonald of Merchant & Gould to Scott Robertson of Goodwin Procter regarding Lawson's release of RQC.
4. Attached at Exhibit 10 is a true and correct copy of relevant portions of the transcript of Dr. Alfred C. Weaver's February 9, 2012 deposition.
5. Attached at Exhibit 11 is a true and correct copy of Plaintiff ePlus Inc.'s First Set of Interrogatories to Defendant Lawson Software, Inc. for Contempt Proceedings.

6. Attached at Exhibit 12 is a true and correct copy of the relevant portions of the transcript of Dr. Benjamin Goldberg's February 2, 2012 deposition.

I hereby declare, under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: February 15, 2012
Los Angeles, CA



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